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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/165820

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 04, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Professional Services Group - PSG in regard to Kinship Care, a hearing was held on May 19, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Professional Services Group (the agency) correctly ended the Petitioner's kinship benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Tracy Pachowitz, Program Manager, Kinship Care Worker  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. On April 20, 2015, the agency sent the Petitioner a notice advising him that his kinship case would be closed. The notice does not state an effective date. (Exhibit 2)

3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 4, 2015. (Exhibit 1)
4. Petitioner is the maternal grandfather of ■■■, who is 15 years old. (Exhibit 2; Testimony of Petitioner and ■■■)
5. ■■■ has lived with the Petitioner for approximately ten years. (Exhibit 2)
6. ■■■'s mother suffers from profound mental illness. (Testimony of Petitioner; Exhibit 2)
7. Petitioner is concerned that ■■■ is showing early signs of mental illness, though nothing has been diagnosed. (Testimony of Petitioner)
8. Petitioner's father, ■■■, lives across the alley from ■■■ and sees ■■■ regularly. (Testimony of ■■■)
9. ■■■ lives with his girlfriend, ■■■ (Testimony of Petitioner, ■■■ and ■■■)
10. ■■■ does not want to live with ■■■ because she does not like and does not get along with ■■■ (Testimony of ■■■ and ■■■)
11. ■■■ has physically confronted ■■■ and verbally threatened ■■■ with physical violence in the past. (Testimony of ■■■)
12. ■■■ was previously reported to have had a long history of substance abuse issues, but ■■■ currently denies any such issues. (Exhibit 2)
13. ■■■ has previously been convicted of drunk driving in 2010. ■■■ was convicted of stabbing her boyfriend sometime between 1991 and 1993. (Testimony of ■■■)

### DISCUSSION

The Kinship Care benefit is a public assistance payment of \$232 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, the relative must meet all of the conditions set forth in Wis. Stat. §§48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

In this case Petitioner does not yet have guardianship, so Petitioner is not eligible to receive Kinship under Wis. Stats. §48.57(3n).

This case turns on whether Petitioner meets eligibility criteria under Wis. Stats. §48.57(3m)(am)(1-5) which states in pertinent part:

...A county department and, in a county having a population of 500,000 or more, the department shall make payments ... to a kinship care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.
2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

*The Need for Placement and the Best Interests of the Child*

The Wisconsin Administrative Code, at §DCF 58.10(1), describes the “need” for placement as follows:

...The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:

- a) The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
- b) The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
- c) The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
- d) The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

This is a close case. However, it is found that the child needs the kinship placement under criteria b, c and d, given the level of animosity between the child and her father’s live-in girlfriend, given that the child has confronted the girlfriend and made threats of physical violence, and given the girlfriend’s prior conviction for stabbing her boyfriend.

*The risk that the child would meet the criteria under Wis. Stats. §48.13*

Wis. Stat. §48.13, which provides for jurisdiction over children alleged to be in need of protection or services and states in relevant part:

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);
- (3) Who has been the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;
- (4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (5) Who has been placed for care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;

- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (10M) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;
- (11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or
- (13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

This is again a close call. However, given the manner in which the child testified, given that she has confronted and threatened her father's live-in girlfriend, given the girlfriend's prior conviction for stabbing a boyfriend, it is found that the child is at risk of self-injury or physical abuse. It is foreseeable, that the child might incite violence in the household that would result in injury to the child.

I would note that it is undisputed that Petitioner's mother has severe mental health issues that prevent her from caring for the child. Further, the agency previously accepted the report that the child's father, [REDACTED], had a history of substance abuse issues. However, the agency has presented no evidence, other than [REDACTED]'s say so, that he has gotten better or never had such issues. [REDACTED]'s self-admitted conviction for drunk driving certainly raises questions about his claims.

Based upon all of the foregoing, it is found that there is a risk that the child would meet the criteria for being a child in need of protection or services under Wis. Stats. §48.13.

### **CONCLUSIONS OF LAW**

That the agency incorrectly closed the Petitioner's kinship care case.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's kinship care benefits be reinstated from April 20, 2015, going forward. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

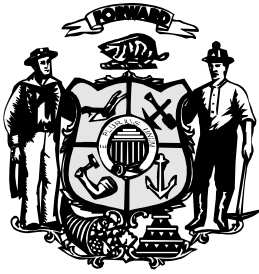
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 20th day of July, 2015.

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\s\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

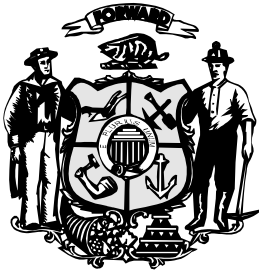
Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 20, 2015.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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